



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Order Extending the Designation of the Provider of Legal Entity Identifiers to be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has issued an order ("Order") to extend the Commission's designation of the Depository Trust and Clearing Corporation ("DTCC") and Society for Worldwide Interbank Financial Telecommunication ("SWIFT") joint venture ("DTCC-SWIFT") as the provider of legal entity identifiers, or "LEIs," pursuant to applicable provisions of the Commodity Exchange Act and the Commission's regulations. DTCC-SWIFT's designation was made by Commission order issued on July 23, 2012, for a term of two years. An Amended and Restated Order issued on July 22, 2014 amended the Commission's order of July 23, 2012, as previously amended on June 7, 2013, to extend DTCC-SWIFT's designation for an additional one year. This Order supersedes the Commission's Amended and Restated Order issued on July 22, 2014 and further extends DTCC-SWIFT's designation for an additional one year while the transition to a fully operational global LEI system continues. This Order permits registered entities and swap counterparties subject to the Commission's jurisdiction to comply with the legal entity

identifier requirements of parts 45 and 46 of the Commission’s regulations by using identifiers issued by DTCC-SWIFT, or any other pre-Local Operating Unit (“pre-LOU”) that has been endorsed by the Regulatory Oversight Committee (“ROC”) of the global LEI system as being globally acceptable and as issuing globally acceptable legal entity identifiers.

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SUPPLEMENTARY INFORMATION:

Table of Contents:

- I. Background
 - A. Legal Entity Identifiers: CEA Section 21(b) and Section 45.6 of the Commission’s Regulations
 - B. Amended and Restated Order of July 22, 2014
- II. Further Extension of Designation of the DTCC-SWIFT Utility
- III. Order

I. Background

- A. Legal Entity Identifiers: CEA Section 21(b) and Section 45.6 of the Commission’s Regulations

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹ amended the Commodity Exchange Act (“CEA”)² to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1 et seq.

the addition of provisions requiring the retention, and the reporting to Commission-registered swap data repositories (“SDRs”), of data regarding swap transactions, in order to enhance transparency, promote standardization and reduce systemic risk.³ Pursuant to these newly added provisions, the Commission added to its regulations part 45,⁴ which sets forth recordkeeping rules, and rules for the reporting of swap transaction data to a registered SDR; and part 46,⁵ which sets forth recordkeeping and swap data reporting rules for historical swaps.

Under the authority granted by section 21(b) of the CEA, which, among other things, directs the Commission “to prescribe standards that specify the data elements for each swap that shall be collected and maintained” by a registered SDR,⁶ the Commission, in its part 45 regulations, prescribed the use of a legal entity identifier, or “LEI,” in required recordkeeping and swap data reporting. Section 45.6 provides that “[e]ach counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to [part 45] by means of a single legal entity identifier as specified in this section.”⁷ In adopting this requirement, the Commission highlighted the LEI as a crucial regulatory tool to facilitate data aggregation

³ See, e.g., section 2(a)(13)(G) of the CEA, which requires all swaps, whether cleared or uncleared, to be reported to a registered SDR; new section 21(b) of the CEA, which directs the Commission to prescribe standards for swap data reporting and attendant recordkeeping; and new sections 4r and 2(h)(5) of the CEA, which, among other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act (“pre-enactment swaps”), as well as swaps in effect after such enactment but prior to the effective date for compliance with the Commission’s final recordkeeping and swap data reporting rules (“transition swaps” and, collectively with pre-enactments swaps, “historical swaps”).

⁴ Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012).

⁵ Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).

⁶ CEA section 21(b).

⁷ 77 FR at 2204. In addition, in part 46 of the Commission’s regulations, § 46.4 provides that each counterparty to a historical swap in existence on or after April 25, 2011, for which an initial data report is required pursuant to part 46, must obtain a legal entity identifier, which must be used for purposes of recordkeeping and swap data reporting under part 46 as prescribed in § 46.4. 77 FR at 35228 - 35229.

by regulators, which furthers, among other goals, the systemic risk mitigation and market manipulation prevention purposes of the Dodd-Frank Act.⁸

Section 45.6 sets forth requirements that the legal entity identifier to be used to comply with the Commission's recordkeeping and swap data reporting rules must meet, including satisfaction of specified technical and governance principles. In adopting these requirements, the Commission took into consideration work that had commenced at the international level to establish a global LEI system.⁹ The Commission expressed its agreement that "optimum effectiveness of [the LEI] as a tool for achieving the systemic risk mitigation, transparency and market protection goals of the Dodd-Frank Act – goals shared by financial regulators world-wide – would come from creation of [an LEI] ... that is capable of becoming the single international standard for unique identification of legal entities across the world financial sector."¹⁰ The Commission cited its involvement in an international initiative, coordinated by the Financial Stability Board ("FSB"),¹¹ to establish standards, and a governance framework, for a global LEI system – including the Commission's participation in an ad hoc, expert group of regulatory authorities convened by the FSB to develop recommendations regarding the implementation of such a system.¹²

⁸ See 77 FR at 2138.

⁹ See 77 FR at 2163.

¹⁰ Id.

¹¹ The FSB is an international body that develops and promotes the implementation of effective regulatory, supervisory and other policies in the interest of financial stability. Established in 2009 as a successor to the Financial Stability Forum, the FSB coordinates the work of national financial authorities, international standards setting bodies and international financial institutions. Its membership includes G-20 members, the International Monetary Fund and the World Bank. The FSB Secretariat is located in Basel, Switzerland. The FSB's website can be accessed at <http://www.financialstabilityboard.org>.

¹² See 77 FR at 2162.

B. Amended and Restated Order of July 22, 2014

On July 22, 2014 the Commission issued an Amended and Restated Order, which amended the Commission's July 23, 2012 order, as previously amended on June 7, 2013, to extend its designation of the DTCC-SWIFT utility while the terms of transition to a fully operational global LEI system were finalized and implemented. In the Amended and Restated Order, the Commission aligned the legal entity identifier terminology used therein with the terminology that is currently in use at the international level, and removed certain provisions that, given the current state of implementation of the global LEI system, were no longer applicable.

In the preamble to the Amended and Restated Order, the Commission noted that the process to establish the global LEI system continued to move forward since the issuance of the Amendment on June 7, 2013, noting various implementation milestones,¹³ and that while progress towards the establishment of the global LEI system continued, the system would not be fully operational before the expiration of DTCC-SWIFT's two-year term of designation under the July 23, 2012 Order. The Commission believed it was appropriate, in order to further the smooth transition to a fully operational global LEI system, to extend its designation of the DTCC-SWIFT utility, given the significant progress made in establishing the global LEI system – including the ROC's endorsement of the DTCC-SWIFT utility as a globally acceptable pre-LOU.

¹³ In the second half of 2013, the ROC adopted endorsement standards for pre-LOUs and the identifiers issued by them, and endorsed sixteen member-sponsored pre-LOUs – including DTCC-SWIFT – as globally acceptable. The Global LEI Foundation that will provide the Central Operating Unit ("COU"), managing the central operations of the global LEI system, was formally established under Swiss law. The ROC and the Global LEI Foundation are developing a framework for the transition of full operational management of the global LEI system to the COU, with supervisory oversight by the ROC in the public interest.

II. Further Extension of Designation of the DTCC-SWIFT Utility

Progress towards the establishment of the global LEI system continues. The Global LEI Foundation (“GLEIF”) is incorporated and currently in the process of finalizing the Master Agreement with pre-LOUs, including DTCC-SWIFT’s Global Markets Entity Identifier (“GMEI”) utility. The ROC continues, within its authority, to facilitate that process. The finalization of the Master Agreement is a deliberative process that includes several multi-party discussions.¹⁴ Progress has been made and all parties involved are putting forth efforts to conclude the necessary steps expeditiously. Once pre-LOUs sign the Master Agreement and become accredited, they will become LOUs and will be under the direct operational oversight of the GLEIF, which in turn will be under the oversight of the ROC. While it is expected that the Master Agreement will be signed and DTCC-SWIFT accredited in the near term, given the international and deliberative nature of the process, the Commission finds it appropriate to provide sufficient time for the process to conclude successfully and smoothly.

Accordingly, the Commission is issuing this Order, to further extend the Commission’s designation of the DTCC-SWIFT utility while the transition to a fully operational global LEI system is finalized and implemented. The Commission is not otherwise modifying the terms or conditions found in the Amended and Restated Order.

¹⁴ In its 2014 Annual Report, the GLEIF reported certain milestones regarding the development and implementation of the Master Agreement including: achieving consensus on core principles among the pre-LOUs and the GLEIF; developing a common set of terms and conditions for LOU operations to be executed in 2015; and arriving at an agreed framework for business operations between the GLEIF and the LOUs. See GLEIF 2014 Annual Report, available at https://www.gleif.org/content/1-about/4-governance/9-annual-report/20150622_V1_1_RZ_GLEIF_AR_web.pdf.

III. Order

It is ordered, pursuant to section 21(b) of the CEA and § 45.6 of the Commission's regulations that:

1. Subject to Section 2(a), below, the Depository Trust and Clearing Corporation ("DTCC") and Society for Worldwide Interbank Financial Telecommunications ("SWIFT") joint venture ("DTCC-SWIFT") is designated as the provider of legal entity identifiers ("LEIs"), to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations.

a. This designation is conditioned on DTCC-SWIFT's continuing compliance, for as long as it is authorized to provide LEIs by this order or any future order of the Commission, with all of the legal entity identifier requirements of part 45 of the Commission's regulations, and any related requirements as set forth in this order or in the requirements document provided to DTCC-SWIFT during the determination and designation process; including, without limitation, the requirement to be subject to supervision by a governance structure that includes the Commission and other financial regulators in any jurisdiction requiring use of legal entity identifiers pursuant to applicable law, for the purpose of ensuring that issuance and maintenance of LEIs and of associated reference data adheres on an ongoing basis to the Commission's requirements set forth in part 45.

b. This designation is further conditioned on the requirement that, subject to applicable confidentiality laws and other applicable law, (1) DTCC-SWIFT shall make public all LEIs and associated reference data, utility operations, and identity validation processes, and (2) if DTCC-SWIFT fails to satisfy the conditions of this designation, or

upon any termination of this designation pursuant to Section 2(c)(2) below, DTCC-SWIFT shall, as instructed by the Commission, pass to a successor LEI utility specified by the Commission, or to the global LEI system, free of charge, all LEIs issued by DTCC-SWIFT and associated reference data and all LEI intellectual property rights.

c. This designation is made for a limited term, expiring on July 22, 2016 and may be terminated by the Commission on three months' notice in connection with (1) the establishment of the global LEI system, or (2) DTCC-SWIFT's exit from the global LEI system.

2. To comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations:

a. Registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by DTCC-SWIFT, or any other pre-Local Operating Unit ("pre-LOU") approved by the Regulatory Oversight Committee of the global LEI system ("ROC") as globally acceptable and as issuing globally acceptable LEIs. The list of pre-LOUs that are currently approved by the ROC as globally acceptable and as issuing globally acceptable LEIs, including the website address via which registered entities and swap counterparties may contact each such pre-LOU, is available at http://www.leiroc.org/publications/gls/lou_20131003_2.pdf.

b. As provided in § 45.6(b)(1) of the Commission's regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall be identified in all swap recordkeeping and swap data reporting by a single LEI.

3. This Order supersedes the Commission's Amended and Restated Order issued on July 22, 2014.

Issued in Washington, DC, on July 17, 2015, by the Commission.

Christopher J. Kirkpatrick,
Secretary of the Commission.

**Appendix to Order Extending the Designation of the Provider of Legal Entity
Identifiers to be Used in Recordkeeping and Swap Data Reporting Pursuant to the
Commission's Regulations – Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative. Commissioner Wetjen did not participate in this matter.

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